

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE ENROLLED ACT No. 1120

AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 27-1-15.6-2, AS ADDED BY HEA 1674-2001, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2002]: Sec. 2. The following definitions apply throughout this chapter, IC 27-1-15.7, and IC 27-1-15.8:

- (1) "Bureau" refers to the child support bureau of the division of family and children established under IC 12-17-2-5.
- (2) "Business entity" means a corporation, an association, a partnership, a limited liability company, a limited liability partnership, or another legal entity.
- (3) "Commissioner" means the insurance commissioner appointed under IC 27-1-1-2.
- (4) "Consultant" means a person who:
 - (A) holds himself or herself out to the public as being engaged in the business of offering; or
 - (B) for a fee, offers;
any advice, counsel, opinion, or service with respect to the benefits, advantages, or disadvantages promised under any policy of insurance that could be issued in Indiana.
- (5) "Delinquent" means the condition of being at least:
 - (A) two thousand dollars (\$2,000); or
 - (B) three (3) months;
past due in the payment of court ordered child support.



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- (6) "Home state" means the District of Columbia or any state or territory of the United States in which an insurance producer:
- (A) maintains the insurance producer's principal place of residence or principal place of business; and
 - (B) is licensed to act as an insurance producer.
- (7) "Insurance producer" means a person required to be licensed under the laws of Indiana to sell, solicit, or negotiate insurance.
- (8) "License" means a document issued by the commissioner authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit an insurance carrier.
- (9) "Limited line credit insurance" includes the following:
- (A) Credit life insurance.
 - (B) Credit disability insurance.
 - (C) Credit property insurance.
 - (D) Credit unemployment insurance.
 - (E) Involuntary unemployment insurance.
 - (F) Mortgage life insurance.
 - (G) Mortgage guaranty insurance.
 - (H) Mortgage disability insurance.
 - (I) Guaranteed automobile protection (gap) insurance.
 - (J) Any other form of insurance:
 - (i) that is offered in connection with an extension of credit and is limited to partially or wholly extinguishing that credit obligation; and
 - (ii) that the insurance commissioner determines should be designated a form of limited line credit insurance.
- (10) "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one (1) or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.
- (11) "Limited lines insurance" means any of the following:
- (A) The lines of insurance defined in section 18 of this chapter.
 - (B) Any line of insurance the recognition of which is considered necessary by the commissioner for the purpose of complying with section 8(e) of this chapter.
 - (C) For purposes of section 8(e) of this chapter, any form of insurance with respect to which authority is granted by a home state that restricts the authority granted by a limited lines producer's license to less than total authority in the associated

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major lines described in section 7(a)(1) through 7(a)(6) of this chapter.

(12) "Limited lines producer" means a person authorized by the commissioner to sell, solicit, or negotiate limited lines insurance.

(13) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(14) **"Person" means an individual or a business entity.**

(15) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of a company.

~~(15)~~ (16) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

~~(16)~~ (17) "Surplus lines producer" means a person who sells, solicits, negotiates, or procures from an insurance company not licensed to transact business in Indiana an insurance policy that cannot be procured from insurers licensed to do business in Indiana.

~~(17)~~ (18) "Terminate" means:

(A) the cancellation of the relationship between an insurance producer and the insurer; or

(B) the termination of a producer's authority to transact insurance.

~~(18)~~ (19) "Uniform business entity application" means the current version of the national association of insurance commissioners uniform business entity application for resident and nonresident business entities.

~~(19)~~ (20) "Uniform application" means the current version of the national association of insurance commissioners uniform application for resident and nonresident producer licensing.

SECTION 2. IC 27-1-15.6-12, AS ADDED BY HEA 1674-2001, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2002]: Sec. 12. (a) For purposes of this section, "permanently revoke" means that:

(1) the producer's license shall never be reinstated; and

(2) the former licensee, after the license revocation, is not eligible to submit an application for a license to the department.

(b) The commissioner may levy a civil penalty, place an insurance producer on probation, suspend an insurance producer's license, revoke

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an insurance producer's license for a period of years, permanently revoke an insurance producer's license, or refuse to issue or renew an insurance producer license, or take any combination of these actions, for any of the following causes:

- (1) Providing incorrect, misleading, incomplete, or materially untrue information in a license application.
- (2) Violating:
 - (A) an insurance law; ~~or~~
 - (B) a regulation;
 - (C) a subpoena **of an insurance commissioner**; or
 - (D) an order of ~~the an~~ insurance commissioner; **of Indiana or** of another state.
- (3) Obtaining or attempting to obtain a license through misrepresentation or fraud.
- (4) Improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business.
- (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.
- (6) Having been convicted of a felony.
- (7) Admitting to having committed or being found to have committed any unfair trade practice or fraud in the business of insurance.
- (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere.
- (9) Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory.
- (10) Forging another's name to an application for insurance or to any document related to an insurance transaction.
- (11) Improperly using notes or any other reference material to complete an examination for an insurance license.
- (12) Knowingly accepting insurance business from an individual who is not licensed.
- (13) Failing to comply with an administrative or court order imposing a child support obligation.
- (14) Failing to pay state income tax or to comply with any administrative or court order directing payment of state income tax.
- (15) Failing to satisfy the continuing education requirements established by IC 27-1-15.7.

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(16) Violating section 31 of this chapter.

(17) Failing to timely inform the commissioner of a change in legal name or address, in violation of section 7(h) of this chapter.

(c) The commissioner shall refuse to:

(1) issue a license; or

(2) renew a license issued;

under this chapter to any person who is the subject of an order issued by a court under IC 31-14-12-7 or IC 31-16-12-10 (or IC 31-1-11.5-13(m) or IC 31-6-6.1-16(m) before their repeal).

(d) If the commissioner refuses to renew a license or denies an application for a license, the commissioner shall notify the applicant or licensee and advise the applicant or licensee, in a writing sent through regular first class mail, of the reason for the denial of the applicant's application or the nonrenewal of the licensee's license. The applicant or licensee may, not more than sixty-three (63) days after notice of denial of the applicant's application or nonrenewal of the licensee's license is mailed, make written demand to the commissioner for a hearing before the commissioner to determine the reasonableness of the commissioner's action. The hearing shall be held not more than thirty (30) days after the applicant or licensee makes the written demand, and shall be conducted under IC 4-21.5.

(e) The license of a business entity may be suspended, revoked, or refused if the commissioner finds, after hearing, that a violation of an individual licensee acting on behalf of the partnership or corporation was known or should have been known by one or more of the partners, officers, or managers of the partnership or corporation and:

(1) the violation was not reported to the commissioner; and

(2) no corrective action was taken.

(f) In addition to or in lieu of any applicable denial, suspension, or revocation of a license under subsection (b), a person may, after a hearing, be subject to the imposition by the commissioner under subsection (b) of a civil penalty of not less than fifty dollars (\$50) and not more than ten thousand dollars (\$10,000). A penalty imposed under this subsection may be enforced in the same manner as a civil judgement.

(g) A licensed insurance producer or limited lines producer shall, not more than ten (10) days after the producer receives a request in a registered or certified letter from the commissioner, furnish the commissioner with a full and complete report listing each insurer with which the licensee has held an appointment during the year preceding the request.

(h) If a licensee fails to provide the report requested under

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subsection (g) not more than ten (10) days after the licensee receives the request, the commissioner may, in the commissioner's sole discretion, without a hearing, and in addition to any other sanctions allowed by law, suspend any insurance license held by the licensee pending receipt of the appointment report.

(i) The commissioner shall promptly notify all appointing insurers and the licensee regarding any suspension, revocation, or termination of a license by the commissioner under this section.

(j) The commissioner may not grant, renew, continue, or permit to continue any license if the commissioner finds that the license is being used or will be used by the applicant or licensee for the purpose of writing controlled business. As used in this subsection, "controlled business" means:

- (1) insurance written on the interests of:
 - (A) the applicant or licensee;
 - (B) the applicant's or licensee's immediate family; or
 - (C) the applicant's or licensee's employer; or
- (2) insurance covering:
 - (A) the applicant or licensee;
 - (B) members of the applicant's or licensee's immediate family; or
 - (C) either:
 - (i) a corporation, limited liability company, association, or partnership; or
 - (ii) the officers, directors, substantial stockholders, partners, members, managers, employees of such a corporation, limited liability company, association, or partnership; of which the applicant or licensee or a member of the applicant's or licensee's immediate family is an officer, director, substantial stockholder, partner, member, manager, associate, or employee.

However, this section does not apply to insurance written or interests insured in connection with or arising out of credit transactions. A license is considered to have been used or intended to be used for the purpose of writing controlled business if the commissioner finds that during any twelve (12) month period the aggregate commissions earned from the controlled business exceeded twenty-five percent (25%) of the aggregate commission earned on all business written by the applicant or licensee during the same period.

(k) The commissioner has the authority to:

- (1) enforce the provisions of; and
- (2) impose any penalty or remedy authorized by;



this chapter or any other provision of this title against any person who is under investigation for or charged with a violation of this chapter or any other provision of this title, even if the person's license or registration has been surrendered or has lapsed by operation of law.

(l) For purposes of this section, the violation of any provision of IC 28 concerning the sale of a life insurance policy or an annuity contract shall be considered a violation described in subsection (b)(2).

(m) The commissioner may order a licensee to make restitution if the commissioner finds that the licensee has committed a violation described in:

- (1) subsection (b)(4);
- (2) subsection (b)(7);
- (3) subsection (b)(8); or
- (4) subsection (b)(16).

(n) The commissioner shall notify the securities commissioner appointed under IC 23-2-1-15 when an administrative action or civil proceeding is filed under this section and when an order is issued under this section denying, suspending, or revoking a license.

SECTION 3. IC 27-7-9-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE SEPTEMBER 1, 2001]: Sec. 8. (a) Coverage for damage due to mine subsidence must be available as an additional form of coverage under any insurance policy providing the type of insurance described in Class 3(a) of IC 27-1-5-1 to directly cover one (1) or more structures located in a county identified under section 6 of this chapter. The mine subsidence coverage must be available in an amount adequate to indemnify the insured to the extent of the loss in actual cash value of the covered structure due to mine subsidence, less a deductible equal to two percent (2%) of the insured value of the structure under the policy. However, the deductible must be no less than two hundred fifty dollars (\$250) and no more than five hundred dollars (\$500).

(b) An insurer proposing to issue a policy providing the type of insurance described in Class 3(a) of IC 27-1-5-1 to cover one (1) or more structures located in a county identified under section 6 of this chapter shall inform the prospective policyholder of the availability of mine subsidence coverage under this section. An insurer shall inform the prospective policyholder of the availability of mine subsidence coverage under this subsection when a policy described in this subsection is issued. ~~However, an insurer is not required to inform a prospective policyholder of the availability of mine subsidence coverage if the issuance of the policy will take place after June 30, 2000.~~

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(c) When an insurer informs a prospective policyholder of the amount of the premium for the mine subsidence coverage that is available as an additional form of coverage under a policy as required by subsection (a), the premium for the mine subsidence coverage must be stated separately from the premium for the other coverage provided by the policy. The amount of the premium for mine subsidence coverage provided by an insurer under this section must be set according to the premium level set by the commissioner under section 10 of this chapter.

(d) Except as provided in subsection (f), an insurance policy providing the type of insurance described in Class 3(a) of IC 27-1-5-1 to directly cover one (1) or more structures located in a county identified under section 6 of this chapter must include the mine subsidence coverage provided for under subsection (a) if the prospective insured (before issuance of the policy) or the insured (before renewal of the policy) indicates that the coverage is to be included in the policy.

(e) An insurer is not required to provide mine subsidence coverage under subsection (a) under any insurance policy in an amount exceeding the amount that is reimbursable from the fund under section 9(a)(4) of this chapter.

(f) An insurer must decline to make the mine subsidence coverage provided for under subsection (a) available to cover a structure evidencing unrepaired mine subsidence damage, until necessary repairs are made. An insurer may also decline to make the mine subsidence coverage available under an insurance policy if the insurer has:

- (1) declined to issue the policy;
- (2) declined to renew the policy; or
- (3) canceled all coverage under the policy for underwriting reasons unrelated to mine subsidence.

SECTION 4. IC 27-7-9-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 9. (a) An insurer making the type of insurance described in Class 3(a) of IC 27-1-5-1 shall enter into a reinsurance agreement with the commissioner. The reinsurance agreement must include the following terms:

- (1) The insurer agrees to cede to the commissioner one hundred percent (100%) of any mine subsidence coverage issued under this chapter, subject to a maximum limit of ~~one two~~ hundred thousand dollars ~~(\$100,000)~~ **(\$200,000)** per structure insured.
- (2) The insurer shall collect the premiums for mine subsidence insurance, may retain a ceding commission in an amount set by the commissioner, and shall remit the remainder of the premiums

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to the commissioner for deposit in the mine subsidence insurance fund.

(3) The insurer, in consideration of the ceding commission, shall:

(A) undertake the adjustment of losses under the mine subsidence coverage issued under this chapter by the insurer, with technical assistance provided under section 9.5 of this chapter; and

(B) pay the taxes and absorb all other expenses necessarily incurred by the insurer in the sale of policies and the administration of the mine subsidence insurance program under this chapter.

(4) The commissioner shall reimburse the insurer from the mine subsidence insurance fund for all amounts paid to policyholders for mine subsidence insurance claims.

(5) The insurer is not required to pay a claim for any mine subsidence loss insured under this chapter if the amount available in the mine subsidence insurance fund is insufficient to reimburse the insurer for the claim.

(b) The determination of the commissioner as to the amount of the ceding commission that an insurer may retain under subsection (a)(2) must be based on a consideration of the insurer's reasonable administrative costs (including agents' commissions).

SECTION 5. IC 27-7-9-18 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 18. The department of insurance shall, every three (3) years beginning not later than November 1, 2001, publish a report regarding mine subsidence insurance provided under this chapter, including the:**

(1) number of claims filed;

(2) amount paid for each claim; and

(3) amount remaining in the mine subsidence insurance fund established under section 7 of this chapter;

since the date of the previous publication of the report under this section.

SECTION 6. HEA 1674-2001, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2002]: SECTION 28. (a) After December 31, 2001:

(1) any reference in the Indiana Code to an insurance agent shall be treated as a reference to an insurance producer (as defined in IC 27-1-15.6-2(7), as added by this act);

(2) any reference in the Indiana Code to a surplus lines insurance agent shall be treated as a reference to a surplus lines producer (as

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defined in ~~IC 27-1-15.6-2(16)~~; **IC 27-1-15.6-2(17)**, as added by this act); and

(3) any reference in the Indiana Code to a limited insurance representative shall be treated as a reference to a limited lines producer (as defined in IC 27-1-15.6-2(12), as added by this act).

(b) This SECTION expires June 30, 2005.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana

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